IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.77 OF 2006
IN
WRIT PETITION NO.7259 OF 2005

Shri Ghanshyam Tukaram Gavali, .. Petitioner.

Vs

State of Maharashtra and ors. .. Respondents.

Mr S.D.Rupwate, for the petitioner.
Mr C.R.Sonawane, AGP for respondent nos 1 and 2.
Smt Neeta Karnik, for respondent nos 3 and 5.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.
DATED : 27th JUNE, 2007

P.C.: (Per D.B.Bhosale,J.)

1. We have heard the learned counsel for the petitioner, the learned AGP for respondent nos 1 and 2 and the learned counsel for respondent nos 3 and 5.

2. This review petition is directed against an order dated 16.11.2005 by which the writ petition filed by the petitioner was rejected at the stage of admission. Mr Rupwate, learned counsel for the petitioner, raised two contentions. Firstly, he submitted that Rule 11.11, on which a reliance was placed and a reference is made while rejecting the writ petition, is not a rule and has no force in law. He further submitted that as per the policy of the respondent-State, the employees of scheduled caste and scheduled tribes are required to be treated as

belonging to scheduled caste and scheduled tribe from the date of joining, provisionally and till the submission of the caste certificate and once such certificate is submitted such employees would be entitled for the benefits from the date of their joining service. Secondly, he submitted that similarly placed junior employees are placed above him in the seniority list and this aspect has not been considered while disposing of the writ petition.

3. We perused the order dated 16.11.2005 as also the review petition. The petitioner joined the service in 1970. When he joined the service he did not join it as a person belonging to a reserved category. In other words, he was not appointed on the post reserved for scheduled caste. He obtained a certificate belonging to scheduled caste for the first time in 1985 and its validation was obtained in 2004. It is against this backdrop even if rule 11.11 is not applied he was not entitled for any benefit in the service being a person belonging to scheduled caste atleast till 1985. He claimed promotion being a member of the scheduled caste only after he obtained the caste certificate in 1985. Moreover, it appears that he was given benefits as a person belonging to scheduled caste in 1985 itself and in the seniority list w.e.f.1.8.84 he was shown to be entitled for

promotion from 20.6.1990, i.e. when promotional post became vacant. In the circumstances we find absolutely no merit in the first contention of Mr Rupwate.

4. Insofar as the second contention of Mr Rupwate is concerned, the petitioner has not raised this as a ground in the review petition. The seniority list placed on record shows that respondent nos 5 and 6 are senior to the petitioner. Mr Rupwate submitted that they are wrongly shown above the petitioner in the seniority list w.e.f.1.8.1984. The petitioner has not challenged the said seniority list so far either independently or in the writ petition/review petition. This contention was not even urged when the writ petition was heard for admission and, therefore, it is not possible for us to enter into a controversy as to whether respondent nos 5 and 6 are juniors to the petitioner. In the circumstances, the review application is dismissed.

(D.B.BHOSALE,J.) (SMT.RANJANA DESAI,J.)